

IN RE: Intrastate Universal Service Fund)
)
Petition of the Office of Regulatory Staff (ORS))
For an Order Clarifying USF Guidelines)
And Request for Expedited Relief)
)
Petition of South Carolina Cable Television)
Associations (SCCTA) In Support of ORS' Petition)
And to Raise Additional Issues)

COMES NOW, ITC^{DeltaCom} Communications, Inc. (“Deltacom”) pursuant to the Rules of the South Carolina Public Service Commission (“Commission”) and hereby files this Response in accordance with (1) the Commission’s revised Notice issued April 11, 2006 concerning the Petition of the Office of Regulatory Staff (“ORS”) for an Order Clarifying Intrastate Universal Service Fund (“USF”) Guidelines and Request for Expedited Relief, dated March 16, 2006 and (2) the Commission’s Notice issued April 13, 2006 concerning the SCCTA’s Petition in Support of ORS’ Petition and to Raise Additional Issues, dated April 5, 2006.

As a threshold matter, Deltacom appreciates the effort of the ORS to bring clarity and consistency to the reporting, and ultimately the assessment of, the State's Universal Service Fund. With regard to the specific issues that the ORS raised, DeltaCom asserts the following:

1. Whether international revenues should be included in the intrastate USF assessment? Deltacom supports the ORS' position that revenues from international calls should not be included in the fund assessment. Deltacom would have the Commission take notice of a decision of the U.S. Court of Appeal for the Fifth Circuit, AT&T Corp. v. Public Utility Commission of Texas, 373 F.3d 641 (5th Cir. 2004), affirming the district court's determination that a Texas Statute that imposed state USF fees on international (as well as interstate) calls originating in Texas was discriminatory and, therefore, preempted by federal law.¹ At issue in that case is a 3.6% USF assessment imposed by the Texas Public Utilities Commission (PUC) on all telecommunications carriers who provide any intrastate service. As to these carriers, however, the fee applied to all revenue they derived from intrastate, interstate, and international calls originating in Texas. Thus, these "multijurisdictional" carriers were compelled to pay both the federal universal service fee and the state universal service fee on international (and interstate) calls originating in Texas. The court found that the Texas PUC's double assessment on international (and interstate) calls creates an inequitable, discriminatory, and anti-competitive regulatory scheme that violates federal law.

2. Whether under current Commission orders, broadband and wireless services revenues should be included in the intrastate USF assessment? Deltacom agrees with ORS' conclusion that, under current Commission orders, broadband and wireless services revenues are not included in the intrastate USF assessment. The separate question of whether intrastate wireless revenue should be included in the USF assessment as a policy matter is raised in the SCCTA petition, and Deltacom submits that the Commission should find so affirmatively.

3. Whether revenues from directory listings, surcharges assessed to recover federal universal service fund charges, and revenues from the provision of special access services to retail end users should be included in the intrastate USF assessment? Deltacom supports

¹ Without waiving its right to challenge South Carolina's position, Deltacom acknowledges that the South Carolina USF assessment includes interstate revenues.

the ORS' view that (1) directory listings should not be included in the intrastate USF assessment, and (2) that revenues from the provision of special access services to retail end users should be included in the intrastate USF assessment. Deltacom asserts, however, that surcharges assessed to recover federal universal service fund charges should not be included in the intrastate USF assessment. To include such federal universal service fund "revenue," which is essentially a pass-through, in South Carolina's assessment would unnecessarily penalize telecommunications carriers for administering their federal obligations. The FCC already prohibits telecommunications carriers from recovering their federal universal service contribution costs through a separate line item that includes a mark-up above the relevant contribution factor. See 47 C.F.R. sec. 54.712(a); In the Matter of Federal-State Joint Board, CC Docket No. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329, paras. 2, 45-51 (rel. Dec. 13, 2002). In any event, a clear and consistent declaration by the Commission would remove the uncertainty surrounding these items.

4. How end user USF surcharges should be assessed to services provided to Lifeline recipients? Deltacom supports the ORS' view that the USF surcharge should be collected on services provided to a Lifeline customer that exceeds the lifeline credit; provided, however, that the additional services are ones upon which the South Carolina PSC has authority to impose such fees.

5. Whether ORS has the authority to write-off uncollectible debts? Deltacom supports the ORS' view that it be permitted to write-off uncollectible debts from accounts receivable.

II. SCCTA Petition

The SCCTA Petition raises several significant issues pertaining to the equitable distribution of the burden that the State USF places on contributing telecommunications carriers and their end users and urges the Commission to revise its USF Guidelines for South Carolina

and to the extent necessary hold hearings to develop a full record upon which to make its decisions. Deltacom supports the SCCTA's request to have the Commission consider whether wireless revenues should be included for assessment purposes, whether the Commission should conduct an examination of costs and adjustments, and whether bundled services should receive USF support. Each of these matters is appropriate for further consideration. As noted above, Deltacom believes that in order to fairly allocate the cost of support for the State's USF, wireless carriers should contribute to the fund. Wireless carriers already contribute to most state funds, see SCCTA Petition at 2, and contribute to the federal fund as well. Based on the points raised by SCCTA, Deltacom believes that there is sufficient support for a Commission decision to address these matters presently.

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Columbia, South Carolina
May 15, 2006